

REBUTTAL TESTIMONY OF SHERRY LICHTENBERG

ON BEHALF OF WORLDCom, INC.

WorldCom Ex. 1.1

ICC DOCKET NO. 00-0700

May 11, 2001

OFFICIAL FILE

ILL. C. C. DOCKET NO. 00-0200

WorldCom EXHIBIT NO. 1.1

Witness _____

Date 6-27-01 Reporter CB

**REBUTTAL TESTIMONY OF SHERRY LICHTENBERG
ON BEHALF OF WORLDCom, INC.
ICC DOCKET NO. 00-0700
WorldCom Ex. 1.1**

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Sherry Lichtenberg, and my business address is 701 South 12th Street,
Arlington, VA 22202.

**Q. ARE YOU THE SAME SHERRY LICHTENBERG WHO SUBMITTED
PREFILED DIRECT TESTIMONY IN THIS PROCEEDING?**

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of this testimony is to respond primarily to the rebuttal testimony of
Ameritech Illinois witness Mr. Alexander's rebuttal testimony. The issues I address
relate to Ameritech's failure to offer a meaningful Unbundled Network Element Platform
("UNE-P" or "UNE Platform") product in Illinois that would allow Competitive Local
Exchange Carriers ("CLECs") to provide local exchange services to residential and small
business customers on a mass market basis.

**Q. HAVE YOU REVIEWED AMERITECH WITNESS MR. ALEXANDER'S
PREFILED REBUTTAL TESTIMONY IN THIS PROCEEDING?**

A. Yes. Mr. Alexander addressed several points that I made in my initial testimony as well
as the testimony of AT&T/Pace Coalition/Z-Tel witness Mr. Gillan, Corecomm witness
Mr. Webber and Staff witness Mr. Graves. Each of the witnesses mentioned by Mr.
Alexander provided testimony asserting that Ameritech's self-imposed restrictions on its.

UNE-P product are unreasonable and should not be allowed. Instead of addressing the issue of whether the restrictions contained in Ameritech's UNE-P are reasonable, Mr. Alexander attempts to divert the attention of the Examiner and the Commission by suggesting that Ameritech will provide UNE-P to Competitive Local Exchange Carriers ("CLECs") so that they can provide via UNE-P service to customers seeking "new" and additional lines. Ameritech's purported offer, however, is contingent upon "obtaining Commission approval that this amendment meets the combination requirements for the 271 checklist approval and upon obtaining commission assurance that Ameritech's interconnection arrangements in Illinois fully satisfy 271 checklist requirements...." (Alexander Rebuttal, p. 2).

As I will discuss in greater detail, Mr. Alexander has failed to demonstrate that the restrictions that Ameritech imposes on its UNE-P product are reasonable. Moreover, as expressed through Mr. Alexander's testimony, Ameritech's demand that CLECs and the Commission declare that Ameritech's offer fully complies with the provisions of Section 271 of the Telecommunications Act of 1996 ("1996 Act") before Ameritech will provide UNE-P does not address the issue of whether Ameritech's tariff restrictions are reasonable. In any event, Ameritech's proposed Ameritech Illinois 271 Agreement ("I2A") merely presents additional unreasonable restrictions on UNE-P.

Q. HAS MR. ALEXANDER IDENTIFIED ANYTHING NEW THAT CAUSES YOU TO BELIEVE THAT AMERITECH'S SELF-IMPOSED RESTRICTIONS ON ITS UNE-P PRODUCT ARE REASONABLE AND SHOULD BE MAINTAINED?

- A. No. Once again, Mr. Alexander's reasoning appears to be that because Ameritech is not required by federal law to affirmatively combine network elements, it is therefore reasonable that Ameritech refuse to do so at the state level. The ramification of Mr. Alexander's position is that it is appropriate for Ameritech impose restrictions on its UNE-P product in a manner that will prohibit CLECs from providing service via UNE-P to a customer moving into a new home, or to an existing CLEC customers who request a second line. (Alexander Rebuttal, pp. 3-5). As he did in his direct testimony, Mr. Alexander cites various legal bases in support of his belief that the Illinois Commission is preempted from requiring Ameritech to combine network elements at the request of CLECs. Mr. Alexander relies on decisions of the Eighth Circuit Court of Appeals ("IUB I" and "IUB III"), a decision by a federal district court in Michigan ("Verizon v. Strand"), and this Commission's decision in Docket 00-0393. Mr. Alexander asserts that the Commission's 00-0393 decision clearly finds that Ameritech cannot be required to provide new combinations of elements. (Alexander Rebuttal, p. 5).

As Mr. Alexander notes, the Commission's Docket 00-0393 Order was issued after I had filed my initial testimony in this proceeding. While that is true, it is my understanding that after Mr. Alexander filed his rebuttal testimony on March 28, the Commission amended its order in 00-0393 by striking the specific language that Mr. Alexander claims demonstrates that the Commission has already ruled on this issue. In short, the basis for Mr. Alexander's assertion that the combinations issue has already been decided no longer exists. The fact that the Commission saw fit to remove language from its 00-0393 order concerning the impact of the IUB II, IUB III and the Verizon v. Strand decision on the Commission's ability to order Ameritech to combine network elements directly undercuts

the position that Mr. Alexander takes in his testimony. Thus, it appears to me the foundation for Mr. Alexander's conclusion is no longer exists. Moreover, Mr. Alexander seems to have skirted the issue of the restrictions contained in Ameritech's UNE-P tariff are appropriate or should be maintained.

Q. ARE THE COLLOCATION OPTIONS OR THE NEWLY IDENTIFIED "SECURED FRAME" OPTION THAT MR. ALEXANDER DISCUSSES REASONABLE ALTERNATIVES TO REQUIRING AMERITECH TO COMBINE UNES UPON REQUEST?

A. No. Mr. Alexander asserts that CLECs can provide their own customers service to new lines or second lines by combining the unbundled network elements themselves using collocation options or what was identified for the first time in his rebuttal testimony as a "secured frame" option. (Alexander Rebuttal, p. 8). As I discussed in my initial testimony, collocation options that purportedly would allow CLECs to combine elements for themselves are not reasonable. They do not allow CLECs access to UNEs on the same basis that Ameritech has access to UNEs to provide service to its end user customers. It is not clear to me exactly what the "secured frame" option is, but it appears as though this eleventh hour proposal would not allow CLECs the same access that Ameritech has to central office equipment, including direct access to Ameritech's Main Distribution Frames ("MDFs") and switches. Direct access to Ameritech's MDF and switches would be necessary if there is to be nondiscriminatory access to UNEs, but that is something that neither Ameritech nor its parent corporation or affiliates has offered.

Indeed, Ameritech's affiliate Southwestern Bell Telephone Company ("SWBT"), when faced with the prospect of having to provide CLECs with direct access to its MDFs and switches, made a business decision to voluntarily combine UNEs for CLECs in lieu of providing direct access to its network. (Public Utility Commission of Texas, Amendment and Clarification of Arbitration Award, Docket Nos. 16189, et al., Nov. 27, 1997, p. 4, attached hereto as Rebuttal Schedule SL-1). The Commission in which SWBT's voluntary commitment is memorialized makes clear that SWBT decided to combine UNEs for CLECs voluntarily even though it believed it did not have a legal obligation to do so. When SWBT attempted to renege on its voluntary commitment to combine UNEs, the Texas Commission held SWBT to its word citing the fact that "SWBT repeatedly expressed its concerns over allowing LSPs access to its central offices and its preference to doing the combining on behalf of the LSPs," and the fact that "SWBT would have concerns to give direct access to the Main Distribution Frame." (Nov. 27, 1997 Texas Order, p. 5).

Absent a requirement that Ameritech combine UNEs on request, or provide direct access to Ameritech's MDF and other central office equipment, CLECs will be hindered in their ability to provide service to customers requesting new lines or second lines. The fact that SWBT voluntarily decided to combine elements rather than provide direct access to its network demonstrates that what I am asking the Commission to do here is reasonable. I believe it also demonstrates that the restrictions Ameritech attempts to attach to its UNE-P offering are unreasonable and should be rejected. In addition, it is my understanding that since SWBT voluntarily combines UNEs for CLECs, that same arrangement should be available to CLECs pursuant to the requirements of the Illinois Order conditionally

approving the SBC/Ameritech merger. (SBC/Ameritech Merger Order, Docket 98-0555, September 23, 1999, Condition 27(A), p. 246).

Q. MR. ALEXANDER CLAIMS THAT AMERITECH WILL COMBINE UNES FOR CLECS PURSUANT TO A "PROMOTIONAL" PLATFORM OFFERING THAT HAS BEEN AVAILABLE TO CLECS SINCE OCTOBER 17, 1999. IS THE PROMOTIONAL OFFERING TO WHICH MR. ALEXANDER REFERS A VIABLE OPTION FOR CARRIERS SEEKING TO PROVIDE SERVICE ON A MASS MARKET BASIS?

A. No. Mr. Alexander's claim at page 9 of his testimony fails to acknowledge the many restrictions on the purported offering which render it virtually meaningless. That offering limits the number of lines that can be served under the promotional offering to 302,000 promotional lines served via UNE-P and resale. (FCC Order conditionally approving SBC/Ameritech Merger, Oct. 8, 1999, Appendix C, p. 53-55). That means if Ameritech serves approximately seven million lines in the state of Illinois, the promotional offering is available only to serve less than five percent of Ameritech's lines (305,000 lines divided by 7,000,000 lines means that a little over 4 percent of Ameritech's total lines could be served using this option). That purported offer is also time limited and virtually meaningless for a carrier that wants to serve residential and small business customers on a mass market basis. Moreover, it in no way shows how the restrictions that Ameritech imposes on its tariffed UNE-P product are appropriate.

Q. MR. ALEXANDER IMPLIES THAT ITS COLLOCATION OPTION PROVIDES A REASONABLE METHOD BY WHICH CLECS CAN COMBINE UNES TO SERVE CUSTOMERS ON A MASS MARKET BASIS. DO YOU AGREE?

A. No. While CLECs can and do use collocation for various purposes, they do not do so for purposes of providing service to customers via UNE-P. Mr. Alexander's attempt to equate services that are conducive to being provided through a collocation environment to services provided via UNE-P is unpersuasive. Even assuming that collocation could be used by CLECs to provide service via UNE-P, it imposes unreasonable costs and conditions on CLECs. Ameritech's own tariff says that collocation is not necessary for UNE-P. Moreover, Mr. Alexander has utterly failed to address the point I made in my initial testimony that Ameritech has made no mention of how CLECs are supposed to provide service via UNE-P to customers served by Ameritech end offices that Ameritech contends has no space for collocation. Indeed, as of May 3, 2001, Ameritech notified Illinois CLECs that 21 separate central offices in Illinois have no space to accommodate collocation, (See Accessible Letter dated May 3, 2001 attached hereto and identified as Rebuttal Schedule SL-2). Presumably, under Ameritech's proposal CLECs simply would be unable to provide service to customers served by those end offices. That is unreasonable and hinders CLECs in providing service to end user customers.

Q. MR. ALEXANDER CONTENDS THAT THE INTERCONNECTION AGREEMENTS THAT PROVISIONS OF THE INTERCONNECTION AGREEMENTS THAT SBC TELECOM ENTERED INTO IN NEW YORK AND PENNSYLVANIA SHOULD NOT BE MADE AVAILABLE IN ILLINOIS

**BECAUSE THOSE AGREEMENTS WERE NOT "NEGOTIATED." DO YOU
CARE TO COMMENT?**

- A. Yes. The contracts that SBC Telecom and Bell Atlantic New York and Bell Atlantic Pennsylvania submitted to the New York and Pennsylvania Commission's were submitted for approval pursuant to provisions of the 1996 Act applicable to "negotiated" agreements. (See, e.g. Schedule SL-3 Joint Letter requesting approval under 252(e)(4)). Mr. Alexander seems to be splitting hairs. The fact is that an Ameritech CLEC affiliate has available to it interconnection arrangements that allow it to request an ILEC to combine UNEs so that it can provide service to new lines and second lines via UNE-P. It has the ability to do so under negotiated agreements approved in New York and Pennsylvania. Indeed, even if SBC Telecom did not have interconnection agreements in place in those states, it could purchase UNE-P for new and second lines out of the Bell Atlantic tariffs in those states. The bottom line is that Ameritech's own CLEC affiliate has the ability to do this in states outside of its territory. In my opinion, that fact alone shows that the restrictions that Ameritech imposes on its UNE-P product are unreasonable and should be stricken.

**Q. DO YOU HAVE ANY COMMENT ON THE I2A THAT MR. ALEXANDER
DISCUSSES IN HIS TESTIMONY?**

- A. Yes. I believe that the I2A is a non-starter. It does not address the issue at hand -- whether the restrictions on Ameritech's tariffed UNE-P product are reasonable and should be maintained. Moreover, the I2A itself raises a host of concerns that make it unreasonable. In essence, Ameritech's I2A is a demand that CLECs and the Commission declare that Ameritech's offer fully complies with the provisions of Section 271 of the

1996 Act before Ameritech will provide UNE-P for new lines and second lines. In my view, that is unreasonable.

**Q. DOES AMERITECH'S OFFERING OF A CONTRACT AMENDMENT
AMOUNT TO A SUFFICIENT TARIFF OFFERING OF UNE-P?**

A. No. Among other things, the Commission may well order Ameritech under state law to amend its UNE-P tariff to allow for new and second lines, in which case Mr. Alexander's offer is irrelevant. Indeed, Mr. Alexander's discussion of the I2A appears to be nothing more than an attempt to divert the attention of the Examiner and the Commission away from the issue of whether Ameritech's tariff restrictions are reasonable. They are not. Nevertheless I will address several concerns that I have with respect to the I2A -- which go to the timing of availability, waiver conditions and pricing. First, I want to express frustration at the short time frames in the contract amendment. There are serious time limitations in the Ameritech contract offering. The Ameritech contract offering would be for an initial term of 18 months, with a potential 30 month extension. The initial 18-month term would begin if the Commission approved this amendment and the other product offerings at issue in the tariff collaborative, with the exception of prices. The contract amendment would become effective only if and when the Commission were to find that these product offerings satisfy section 271 product offering requirements for network element combinations. The 30-month extension would become effective when and if the FCC approved the Ameritech Illinois 271 application. The 30-month term would follow the 18-month term for a total of four years-assuming FCC approval within

the initial 18-month term. If Ameritech were not to apply for 271, the new UNE-P offering would expire. If the FCC were to reject Ameritech's 271 application, the new UNE-P offering would expire. If the FCC were to approve Ameritech's 271 application, under the best of circumstances under the Ameritech proposed contract amendment CLECs would be barred from obtaining new installations and second lines after 4 years. In short, by this proposed contract amendment Ameritech wants to prevent local competition if it has not opened up the local markets to competition. Also, in the event it opens up the local market to local competition sufficient to obtain section 271 approval it wants to close that opening after 4 years. The Commission should not tolerate this premeditated backsliding on the part of Ameritech. Despite this problem, I will focus on problems I see with the contract with the following two paragraphs.

The waiver language is too broad. WorldCom needs the ability to order out of the tariff (or to pick and choose from, or opt in to, another interconnection agreement) which may contain more favorable terms or which may provide for new combinations or ordinarily combined combinations. In this way, WorldCom would not be discriminated against and would be entitled to the terms and conditions offered to its competitors so that there could be a level playing field. The waiver language is also deficient as WorldCom needs language specifying that nothing limits a CLEC's right or ability to participate in proceedings pursuant to Section 271 of the 1996 Act.

Next, the contract offering suggests pricing which is not based on the recent results of the Illinois Commission's TELRIC proceeding. For competitive reasons, pricing must be based on TELRIC. Otherwise, Ameritech would be given an unjust reward for providing discriminatory service. That is, it would only offer WorldCom service comparable to that which Ameritech provides to itself if WorldCom paid more than the economic cost of this service. This would place Ameritech at an unfair competitive advantage.

Q. WHAT IS YOUR RECOMMENDATION?

A. For all of the foregoing reasons, and the reasons set forth in my initial testimony, I recommend that the Commission find that the restrictions Ameritech imposes on its UNE-P tariff offering are unreasonable and should be stricken. I recommend that the Commission order Ameritech to institute changes to its UNE-P tariff consistent with the tariff attached to my testimony and marked as Rebuttal Schedule SL-4. For the convenience of the Examiner and the Commission, I have also attached as Rebuttal Schedule SL-5 a redlined version of the UNE-P tariff showing the changes that I recommend be adopted. The modifications are the same that AT&T and WorldCom recommended the Commission adopt in Docket 98-0396.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes it does.

ICC Docket No. 00-0700
Rebuttal Testimony of Sherry Lichtenberg
WorldCom Ex. 1.1
Rebuttal Schedule SL-1

May 11, 2001

**PUC DOCKET NOS. 16189, 16196, 16226, 16285, 16290, 16455, 17065,
17579, 17587, AND 17781**

AMENDMENT AND CLARIFICATION OF ARBITRATION AWARD

DOCKET NO. 16189	§	PUBLIC UTILITY COMMISSION
PETITION OF MFS COMMUNICATIONS	§	
COMPANY, INC. FOR ARBITRATION OF	§	OF TEXAS
PRICING OF UNBUNDLED LOOPS	§	
	§	
DOCKET NO. 16196	§	
PETITION OF TELEPORT	§	
COMMUNICATIONS GROUP, INC. FOR	§	
ARBITRATION TO ESTABLISH AN	§	
INTERCONNECTION AGREEMENT	§	
	§	
DOCKET NO. 16226	§	
PETITION OF AT&T COMMUNICATIONS	§	
OF THE SOUTHWEST, INC. FOR	§	
COMPULSORY ARBITRATION TO	§	
ESTABLISH AN INTERCONNECTION	§	
AGREEMENT BETWEEN AT&T AND	§	
SOUTHWESTERN BELL TELEPHONE	§	
COMPANY	§	
	§	
DOCKET NO. 16285	§	
PETITION OF MCI	§	
TELECOMMUNICATIONS	§	
CORPORATION AND ITS AFFILIATE	§	
MCIMETRO ACCESS TRANSMISSION	§	
SERVICES, INC. FOR ARBITRATION AND	§	
REQUEST FOR MEDIATION UNDER THE	§	
FEDERAL TELECOMMUNICATIONS ACT	§	
OF 1996	§	
	§	
DOCKET NO. 16290	§	
PETITION OF AMERICAN	§	
COMMUNICATIONS SERVICES, INC.	§	
AND ITS LOCAL EXCHANGE	§	
OPERATING SUBSIDIARIES FOR	§	
ARBITRATION WITH SOUTHWESTERN	§	
BELL TELEPHONE COMPANY	§	
PURSUANT TO THE	§	
TELECOMMUNICATION ACT OF 1996	§	

AMENDMENT AND CLARIFICATION OF ARBITRATION AWARD

DOCKET NO. 16455	§
PETITION OF SPRINT	§
COMMUNICATIONS	§
COMPANY L.P. FOR ARBITRATION OF	§
INTERCONNECTION RATES, TERMS,	§
CONDITIONS, AND PRICES FROM	§
SOUTHWESTERN BELL TELEPHONE	§
COMPANY	§
	§
DOCKET NO. 17065	§
PETITION OF BROOKS FIBER	§
COMMUNICATIONS OF TEXAS, INC.	§
FOR ARBITRATION WITH	§
SOUTHWESTERN BELL TELEPHONE	§
COMPANY	§
	§
DOCKET NO. 17579	§
APPLICATION OF AT&T	§
COMMUNICATIONS OF THE	§
SOUTHWEST, INC. FOR COMPULSORY	§
ARBITRATION OF FURTHER ISSUES TO	§
ESTABLISH AN INTERCONNECTION	§
AGREEMENT BETWEEN AT&T AND	§
SOUTHWESTERN BELL TELEPHONE	§
COMPANY	§
	§
DOCKET NO. 17587	§
REQUEST OF MCI	§
TELECOMMUNICATIONS	§
CORPORATION AND ITS AFFILIATE,	§
MCIMETRO ACCESS TRANSMISSION	§
SERVICES, INC. FOR CONTINUING	§
ARBITRATION OF CERTAIN	§
UNRESOLVED PROVISIONS OF THE	§
INTERCONNECTION AGREEMENT	§
BETWEEN MCIM AND SOUTHWESTERN	§
BELL TELEPHONE COMPANY	§
	§
DOCKET NO. 17781	§
COMPLAINT OF MCI AGAINST SWBT	§
FOR VIOLATION OF COMMISSION	§
ORDER IN DOCKET NO. 16285	§
REGARDING CABS ORDERING AND	
BILLING PROCESSING	

AMENDMENT AND CLARIFICATION OF ARBITRATION AWARD

On September 30, 1997, the undersigned Arbitrators issued an Arbitration Award in the above styled proceedings. Portions of that award are amended or clarified as set out below.

I. COLLOCATION ISSUE

On October 8, 1997, Teleport Communications Group Inc., (TCG) filed an agreed and unopposed motion for amendment of the above referenced arbitration award, in particular Appendix A, Issue No. 12. The motion, requests replacement of the Arbitrators' decision that collocation costs be grouped into high, medium and low categories with a decision that an average price rate design without these categories can be used. The Arbitrators grant TCG's request and replace the three-tier rate structure with the unified average rate structure proposed in Southwestern Bell Telephone Company's (SWBT's), June 27, 1997 collocation tariff filing. Appendix A, Issue No. 12 is, therefore, amended to delete the requirement that SWBT should tariff rates by grouping eligible structures in three categories: low cost, medium cost, and high cost. The Arbitrators adopt SWBT's proposed language for Issue No. 12.

II. CLARIFICATION ISSUES

On October 22, 1997 and October 30, 1997, SWBT and MCI Telecommunications Corporation and its affiliate, MCImetro Access Transmission Services, Inc. (MCI) respectively, filed motions for clarification of certain provisions of the September 30, 1997 Arbitration Award. The Arbitrators conclude that a number of these requests for clarification have merit and for that reason amend portions of the September 30, 1997 Arbitration Award as reflected on Appendix D, which is attached to this Amendment and Clarification Arbitration Award. Only those provisions of the Arbitration Award specifically referenced on Appendix D are amended, all other relief requested by SWBT and MCI in their respective motions for clarification are hereby denied.

AMENDMENT AND CLARIFICATION OF ARBITRATION AWARD

III. COMBINING NETWORK ELEMENTS

On October 14, 1997, the 8th Circuit Court of Appeals issued an order on rehearing that addresses the combination of network elements. *Iowa Utilities Board v. Federal Communications Commission*, Nos. 96-3321, *et al*, Order on Petitions for Rehearing (8th Cir., Oct. 14, 1997). In that order, the Court reiterates a prior July 18, 1997, holding that an incumbent local exchange company (ILEC) is not obligated to combine network elements for requesting carriers and clarifies that an ILEC is not prohibited from separating network elements that may already be combined. *Id.* After considering the parties' arguments concerning the impact of the Court's October 14 Order on the current arbitration proceedings, the Arbitrators conclude that no change to the Arbitration Award is necessary on the issue of combining network elements. To the extent that the Award provides for the combining of network elements, those provisions remain in effect. The 8th Circuit's order on rehearing reveals no ground for abrogating SWBT's voluntary commitment to combine network elements.

During the arbitration hearing, SWBT made a business decision that, despite its lack of legal obligation, it would combine network elements in lieu of providing local service providers (LSPs) direct access to its network. The lack of legal obligation was made clear in a prior 8th Circuit order issued on July 18, 1997. *Iowa Utilities Board v. Federal Communications Commission*, 120 F. 3d 753 (8th Cir. 1997). In vacating the Federal Communications Commission (FCC)'s rules requiring ILECs to combine network elements purchased by requesting carriers, the Court stated:

While the [federal Telecommunications] Act requires incumbent LECs to provide elements in a manner that enables the competing carriers to combine them, unlike the [Federal Communications] Commission, we do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements. . . . Despite the Commission's arguments, the plain meaning of the Act indicates that the requesting carriers will combine the unbundled elements themselves

Id. at 813. At the time of the arbitration hearings in August 1997, SWBT clearly stated its understanding of its rights on the issue of combining network elements.

AMENDMENT AND CLARIFICATION OF ARBITRATION AWARD

Now on the issue of combining, it is crystal clear -- I mean, few things are clear these days it seems -- but it is crystal clear under the [8th Circuit] Court's ruling that Southwestern Bell has no legal obligation to combine unbundled network elements for the [local exchange provider] LSP or AT&T in this case.

SWBT Opening Statement, Arbitration Hearing on the Merits Transcript (Tr.) at 449 (August 12, 1997). Yet, throughout the hearing on the merits and in subsequent briefing, SWBT unequivocally confirmed that it would bundle network elements. In the same opening statement on August 12, 1997, SWBT's counsel stated "that although we have no legal obligation to combine the unbundled network elements for the LSP or AT&T in this case, we are going to be willing to do so under certain conditions." *Id.* In sworn testimony, SWBT's witnesses affirmed SWBT's willingness to provide the service of combining network elements. *See, e.g.*, Tr. at 507 ("... where we're at in the process is to continue to offer to you what we have offered in the past; and that is to actually do the connecting of the network elements."); Tr. at 541 ("And we've decided that we're willing to hold ourselves out to do the bundling.") Through its witnesses, SWBT also clarified that the conditions contemplated at the time involved when requesting carriers would not have ready access to the network, i.e., in SWBT's central offices. SWBT repeatedly expressed its concerns over allowing LSPs access to its central offices and its preference to doing the combining on behalf of the LSPs. *See, e.g.*, Tr. at 506 (SWBT does not envision an LSP coming in and running jumpers themselves); Tr. at 511 (SWBT would have concerns to give LSPs direct access to the Main Distribution Frame). Finally, in a post-hearing brief, SWBT repeated its voluntary commitment to combining network elements.

The Eighth Circuit has now spoken on the issue of combination of network elements. The Eighth Circuit clearly held that the LSP (i.e., AT&T and MCI) has the legal obligation to combine unbundled network elements. (140-141) Any combining or recombination is the obligation of the LSP and not Southwestern Bell. This being the state of the law, Southwestern Bell has decided for policy reasons that it will perform the combining of unbundled network elements on behalf of the LSP in certain situations (e.g., in the central office).

Brief of Southwestern Bell Telephone Company on the Impact of the Eighth Circuit's July 18, 1997 Decision, p. 11 (August 20, 1997). That SWBT voluntarily committed to combining network elements, even though it understood that it had no legal obligation, could not be clearer.

AMENDMENT AND CLARIFICATION OF ARBITRATION AWARD

SWBT's recent recantation of its commitment to combine network elements and, in the alternative, its unilateral imposition of new conditions to its performance come too late.¹ The 8th Circuit's clarification on rehearing only reiterated the Court's original ruling that ILECs have no legal obligation under federal law to combine network elements.

Moreover, SWBT's explicit commitment to provide network elements in combination when requested had a substantial impact on the arbitration proceedings. Because of SWBT's commitment, the Arbitrators and the parties did not pursue the issue of appropriate terms and conditions for access to SWBT's network were LSPs to combine network elements themselves. In this respect, relying on SWBT's representations, the LSPs responded by relinquishing their right to seek direct access to SWBT's network. Furthermore, over the past year, the parties have been performing and reviewing cost studies to establish the rates to be charged by SWBT for bundling the network elements. Should the Commission have to revisit the issue of combining unbundled network elements, the issue of what constitutes fair and non-discriminatory access to SWBT's network in a competitive environment would necessarily have to be addressed.

IV. ESTABLISHING PERFORMANCE MEASURES

Subsequent to the issuance of the September 30, 1997, Arbitration Award, AT&T Communications of the Southwest, Inc. (AT&T), MCI and SWBT engaged in discussions to negotiate performance measures and benchmarks for services provided by SWBT as well as to establish monetary penalties to be imposed in the event of a specific performance breach. The parties successfully resolved a number of these issues through negotiation. The parties agreements are reflected on Commission Exhibit No. 2 admitted into the evidentiary record of

¹ SWBT has essentially waived its right to assert that it has no obligation to combine network elements. Waiver occurs when a party intentionally relinquishes a known right or engages in intentional conduct inconsistent with claiming that right. *U.S. v. Olano*, 507 U.S. 725, 733 (1993); *First Interstate Bank of Ariz., N.A. v. Interfund Corp.*, 924 F.2d 588, 595 (5th Cir. 1991).

AMENDMENT AND CLARIFICATION OF ARBITRATION AWARD

these proceedings. The issues upon which consensus was reached are set out below.

AT&T and SWBT:

- | | |
|--|--|
| 1. UNE Parity Issue IV-12:
Performance Data | Sections 2.1, 6.0, 8.0, 9.1 to end |
| 2. UNE Parity Issue IV-13: Performance
Measurements - Provisioning Intervals | Section 9.1, Measurements 4 through 26 |
| 3. UNE Parity Issue IV- 14: Performance
Measurements - Network Outages | Section 9.1, Measurements 59 through 26 |
| 4. Performance Criteria Issue VIII-1:
Application of Liquidated Damages | Sections 1.0 through 1.1.3, 3.1, 4.1, 5.1, 6.1
through 6.6, 7.1 through 7.1.2, 8.1, 8.2 |
| 5. Performance Criteria Issue VIII-2:
Performance Data | Same as Item 1 (Issue IV-12) |
| 6. Performance criteria Issue VIII-3:
Performance Measurement - Provisioning
Intervals | Same as Item 2 (Issue IV-13) |

MCI and SWBT:

DPL Issues: 42, 103, 106, 107, 109, 110, 111, 512, 513, 516, 517, 518, 519, 521, 522, 523, 524, 525, 580, 581, 582, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, and 600.

The Arbitrators' decisions on all remaining disputed issues regarding performance measures are found on Appendices A, B, and C attached to this Amendment and Clarification to Arbitration Award.

AMENDMENT AND CLARIFICATION OF ARBITRATION AWARD

On November 24, 1998, AT&T, MCI, and SWBT shall file a joint report describing the effect of the Arbitrators' Award on implementation of performance measures as it relates to liquidated damages.

V. REQUESTS FOR OTHER RELIEF

All other relief requested by any party is hereby denied.

SIGNED AT AUSTIN, TEXAS the _____ day of November 1997.

**PUBLIC UTILITY COMMISSION OF TEXAS
FTA § 252 ARBITRATION PANEL**

PAT WOOD, III, Arbitrator

JUDY WALSH, Arbitrator

DOCKET NOS. 16189, ET AL.

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AMENDMENT AND CLARIFICATION OF ARBITRATION AWARD

On November 24, 1998, AT&T, MCI, and SWBT shall file a joint report describing the effect of the Arbitrators' Award on implementation of performance measures as it relates to liquidated damages.

V. REQUESTS FOR OTHER RELIEF


All other relief requested by any party is hereby denied.

SIGNED AT AUSTIN, TEXAS the 24th day of November 1997.

PUBLIC UTILITY COMMISSION OF TEXAS
FTA § 252 ARBITRATION PANEL



PAT WOOD, III, Arbitrator



JUDY WALSH, Arbitrator

ICC Docket No. 00-0700
Rebuttal Testimony of Sherry Lichtenberg
WorldCom Ex. 1.1
Rebuttal Schedule SL-2

May 11, 2001

Accessible



(ORDERING AND PROVISIONING) Notification of Central Offices Unavailable for Physical Collocation Space - Illinois, Indiana, Michigan, Ohio, Wisconsin

Date: May 3, 2001

Number: **CLECAM01-127**

Contact: Ameritech ILEC Collocation Service Team

Category: Interconnection

Attached is a revised list of Ameritech ILEC premises identified as unavailable for physical collocation due to a lack of space. This list has been updated to remove the following premises from the list:

STATE	OFFICE	ADDRESS	CLLI CODE
Illinois	Kildare	3949 N. LeClaire	CHCGILKI
Wisconsin	Marcy	W 156 N4969 Pilgrim Rd.	MILWWI31
Wisconsin	Houlton	1346 Junction Cth V & E	HLTNWI11

These offices have already been offered to those CLECs on the wait list, and space remains. Kildare, Marcy and Houlton are now available for physical collocation for other applications.

Also, the following Ameritech ILEC premises has been identified as having no space for physical collocation. This list has been updated to reflect the addition of the following premises:

STATE	OFFICE	ADDRESS	CLLI CODE
Illinois	Vernon Hills	611 N. Lakeview Parkway	VNHLILAF

The Ameritech ILECs will continue to notify all CLECs through the Accessible Letter process when the status of premises changes such that space for physical collocation becomes available or is exhausted.

If you have questions or concerns, please contact the Ameritech Collocation Account Team.

Attachment

Ameritech Physical Collocation
Space Exhaustion Report

State
Illinois

Office

Office CLLI Code

Algonquin
Cahokia
Cary
Elk Grove
Franklin
Glen Carbon
Grayslake
Gurnee
Hinsdale
Lake Zurich
Lemont Main
Mokena
O'Fallon
Orland Park
Orland Park-West
Oswego
Schaumburg North
Tinley Park
Vernon Hills
Wauconda
Winnetka

ALGNILAQ
CAHKILAA
CARYILCA
EGVGILEG
CHCGILFR
GLCRILGC
GYLKILGL
GURNILAA
HNDLILHI
LKZRILLZ
LEMTILLE
MOKNILME
OFLNILMQ
ORPKILOR
OPRKILOW
OSWGILOS
SCBGILRS
TNPKILTP
VNHLILAF *
WCNDILWU
WNTKILWN

Wisconsin

Altoona
Brookfield Lakes
Genoa City
Green Bay Cardinal
Green Bay
Greenville
Hortonville
Omro
Park Place
Pewaukee Riverwood
Sturgeon Bay
VanDyne
Williams Bay

ALNAWI11
BFTWWI11
GNCYWI12
GNBYWI13
GNBYWIUGRSO
GNVLWI11
HOVLWI12
OMROWI11
MILWWI38
PEWKWI11
STBYWI11
VNDNWI11
WMBYWI11

Michigan

Chrysler Technology Center
Norway

ABHLMIBH
NRWYMINW

Indiana

Indiana University
Notre Dame University
Oaklondon
Trinity

BLTNINIURS1
SBNDINNDRS1
OKLNIN01
IPLSIN21

ICC Docket No. 00-0700
Rebuttal Testimony of Sherry Lichtenberg
WorldCom Ex. 1.1
Rebuttal Schedule SL-3

May 11, 2001



Bell Atlantic
1095 Avenue of the Americas
Room 3745
New York, New York 10036

Sandra Dilorio Thorn
General Counsel, NY

212-395-6515 (phone)
212-768-7568 (fax)

April 20, 2000

BY HAND

Honorable Debra Renner
Acting Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Interconnection Agreement between
Bell Atlantic - New York and SBC Telecom, Inc.

Dear Secretary Renner:

In accordance with § 252(c) of the Telecommunications Act of 1996 (the "Act"), New York Telephone Company, d/b/a Bell Atlantic - New York ("BA-NY"), is herewith filing an *Interconnection Agreement* effective April 7, 2000 between BA-NY and SBC Telecom, Inc. ("SBCF"), governing interconnection arrangements in the State of New York. The Agreement is submitted for Commission approval under §§ 252(e)(1) and (c)(2).

In the Agreement, SBCT adopts, subject to the exceptions expressly stated in the Agreement, the Interconnection Agreement between MCImetro Access Transmission Services, L.L.C. and BA-NY (the "MCImetro Agreement"), as approved by the Commission on October 1 1997, together with all amendments to the MCImetro Agreement approved by the Commission as of April 7, 2000, such adopted provisions as construed in accordance with applicable federal and state law and regulatory requirements. In addition, SBCT and BA-NY have agreed to the negotiated terms and conditions for collocation and long term number portability that are expressly set forth in the Agreement.

The Act specifies in § 252(e)(4) that, if a state agency does not act to approve or reject an agreement reached by negotiation within 90 days following the filing, it shall be deemed approved.

Honorable Debra Renner

April 20, 2000

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Pursuant to the Commission's Notice of Procedures issued June 14, 1996, copies of this Agreement and this letter are being served on all active parties in Cases 95-C-0657 and 93-C-0103, as well as all telecommunications carriers from which BA-NY has received a request for interconnection, services or network elements pursuant to 47 U.S.C. § 252.

SECT is represented by:

Tom Hartmann, Esq.
Vice President, General Counsel & Secretary
SBC Telecom, Inc.
130 E. Travis Street, Suite 550
San Antonio, Texas 78205
telephone: (210) 351-3427
fax: (210) 351-3630

If you have any questions regarding this matter, please feel free to call me.

Respectfully submitted,

Sandra Dilorio Thorn

Enclosure

cc: Tom Hartmann, Esq., SBC Telecom, Inc. (By U.S. Mail)
Phillip Bowie, SBC Telecom, Inc. (By U.S. Mail)
Emily S. Barbour, Esq., Gardere & Wynne, L.L.P. (By U.S. Mail)
Service List in Cases 95-C-0657 and 93-C-0103 (By U.S. Mail)
All Telecommunications Carriers Requesting Interconnection (By U.S. Mail)

ICC Docket No. 00-0700
Rebuttal Testimony of Sherry Lichtenberg
WorldCom Ex. 1.1
Rebuttal Schedule SL-4

May 11, 2001

PART 19 - Unbundled Network Elements and Number
Portability
SECTION 15 - Provision of Combinations of
Network Elements

1st Revised Sheet No. 1
Cancels
Original Sheet No. 1

1. PROVISION OF COMBINATIONS OF NETWORK ELEMENTS

A. DESCRIPTION

General

Ameritech Illinois, hereinafter referred to as the "Company", provides to requesting telecommunications carriers combinations of network elements. Specifically, the Company provides ordinarily combined Unbundled Local Loop and Unbundled Local Switching with Shared Transport (ULS-ST) as described below and as defined in Sections 2 and 21 of this tariff respectively. "Ordinarily combined" means that the requested combination is of a type ordinarily used or functionally similar to that used by the Company or the Company's end users where the Company provides local service.

All terms, conditions, regulations and application of rates/charges as well as the rates and charges themselves contained in Sections 2 and 21 of this Part, apply to this Section unless expressly provided to the contrary as specified below:

- Collocation, as defined in Part 23, Section 4 of this tariff, is not required for access to ordinarily combined Unbundled Local Loops and Unbundled Local Switching with Shared Transport.
- The Unbundled Local Loop and ULS-ST Port nonrecurring, line/port Connection charges are not applicable.
- The Company shall provide non-Telecommunications Services on a stand-alone basis in conjunction with Provision of Combinations of Network Elements. This includes, but is not limited to, voice mail, inside wire maintenance, customer premises equipment and calling card services.
- Telecommunications carriers that already have an interconnection agreement with the Company pursuant to Section 252 of the Telecommunications Act of 1996 shall be permitted to subscribe to Provision of Combinations of Network Elements under this tariff. This offering is also known as Combined Platform Offering (CPO) and provides for all combinations of Unbundled Network Elements that the Company ordinarily combines for itself and its end user customers as a matter of course, including but not limited to the Unbundled Network Element Platform (UNE Platform or UNE-P) and Enhanced Extended Links (EELs).

B. Nonrecurring Charges Applicable to Combinations of Network Elements

1. Conversion of an existing Ameritech Illinois access line to UNE-P with basic analog loop and basic line port "as is," i.e. conversion to UNE-P with the same features and functions the line had when it was provided by the Company to the end user:

Ameritech Proposed Rate: \$11.79 (\$8.64 for basic line port plus \$3.14 for basic loop service order).

Nonrecurring Cost Model Rate: \$0.29

MCI WorldCom Adjusted Rate: \$1.02.

2. Conversion of an existing Ameritech Illinois access line to UNE-P with basic analog loop and basic line port "as directed," i.e., with different, additional and/or fewer features and functions the line had when it was provided by the Company to the end user:

Ameritech Proposed Rate: \$11.79 (\$8.64 for basic line port plus \$3.14 for basic loop service order).

Nonrecurring Cost Model Rate: \$0.29

MCI WorldCom Adjusted Rate: \$1.02.

3. Combinations of elements for new lines and second lines provided via the UNE-P:

Ameritech Proposed Rate: \$11.79 (\$8.64 for basic line port plus \$3.14 for basic loop service order).

Nonrecurring Cost Model Rate: \$0.29

MCI WorldCom Adjusted Rate: \$1.02.

4. Conversion of an existing special access circuit "as is" to Unbundled Network Elements which make up the Enhanced Extended Link (EEL):

Ameritech: No rate proposed.

Nonrecurring Cost Model Rate: \$0.29.

MCI WorldCom Adjusted Rate: \$1.02.

Pursuant to SBC/Ameritech Merger Conditions in Ill. C.C. Docket No.98-0555 Dated September 23, 1999

Issued: August 23, 2000

Effective: October 8, 2000

By Theresa P. Larkin, Vice President - Regulatory Affairs
225 West Randolph Street
Chicago, Illinois 60606

ICC Docket No. 00-0700
Rebuttal Testimony of Sherry Lichtenberg
WorldCom Ex. 1.1
Rebuttal Schedule SL-5

May 11, 2001

PART 19 - Unbundled Network Elements and Number
Portability
SECTION 15 - Provision of Existing Combinations
of Network Elements

1st Revised Sheet No. 1
Cancels
Original Sheet No. 1

1. PROVISION OF EXISTING COMBINATIONS OF NETWORK ELEMENTS

A. DESCRIPTION

General

Ameritech Illinois, hereinafter referred to as the "Company", provides to requesting telecommunications carriers combinations of network elements. Specifically, the Company provides ordinarily currently combined Unbundled Local Loop and Unbundled Local Switching with Shared Transport (ULS-ST) as described below and as defined in Sections 2 and 21 of this tariff respectively. "Ordinarily combined" means that the requested combination is of a type ordinarily used or functionally similar to that used by the Company or the Company's end users where the Company provides local service.

All terms, conditions, regulations and application of rates/charges as well as the rates and charges themselves contained in Sections 2 and 21 of this Part, apply to this Section unless expressly provided to the contrary as specified below:

- Collocation, as defined in Part 23, Section 4 of this tariff, is not required for access to currently ordinarily combined Unbundled Local Loops and Unbundled Local Switching with Shared Transport.
- The Unbundled Local Loop and ULS-ST Port nonrecurring, line/port Connection charges are not applicable.
- ~~The Company reserves the right to assess additional charges for engineering, administration and maintenance performed by the Company for Provision of Existing Combinations of Network Elements hereunder. The Company, in accordance with current Commission policies, shall file any such additional charges with the Commission.~~
- The Company shall provide Non-Telecommunications Services on a stand-alone basis in conjunction ~~shall not be included with~~ Provision of Existing Combinations of Network Elements. This

¹ See MCI WorldCom Ex. 3.0, pp. 12-13.

² Ameritech witness Silver testified that this language should be removed from the tariff. Ameritech Ex. 2.0, p. 16 and Schedule MBS-3.

³ See MCI WorldCom Ex. 3.0, pp. 5-6; Ex. 3.1, pp. 3-4 and Schedule SL-1.

⁴ Ameritech Ex. 2.0, Schedule MBS-1, p. 1 and Ameritech Ex. 3, Schedule RJF-2, p. 1; Tr. 302-303.

⁵ See AT&T Ex. 1.0, Appendix SET-9.

⁶ The \$1.03 consists of the "Local Switch Record Work Only Order" charge as adjusted by MCI WorldCom witness Jenkins (MCI WorldCom Ex. 2.0, pp. 41-43) with shared and common loadings added to the adjusted TELRIC.

⁷ Per Ameritech witness Silver, Ameritech will not charge for the "port feature add/change translations" where migrations of existing lines are as specified by the CLEC. Tr. 306-307. Therefore, the charge is the same as for migrations as is and the tariff needs to be clear on that point.

includes, but is not limited to, voice mail, inside wire maintenance, customer premises equipment and calling card services.

- Telecommunications carriers that already have an interconnection agreement with the Company pursuant to Section 252 of the Telecommunications Act of 1996 shall be permitted to subscribe to Provision of ~~Existing~~ Combinations of Network Elements under this tariff. This offering is also known as Combined Platform Offering (CPO) and provides for all combinations of Unbundled Network Elements that the Company ordinarily combines for itself and its end user customers as a matter of course, including but not limited to the Unbundled Network Element Platform (UNE Platform or UNE-P) and Enhanced Extended Links (EELs).

B. Nonrecurring Charges Applicable to Combinations of Network Elements

1. Conversion of an existing Ameritech Illinois access line to UNE-P with basic analog loop and basic line port "as is," i.e. conversion to UNE-P with the same features and functions the line had when it was provided by the Company to the end user:

Ameritech Proposed Rate: \$11.79 (\$8.64 for basic line port plus \$3.14 for basic loop service order).

Nonrecurring Cost Model Rate: \$0.29²

MCI WorldCom Adjusted Rate: \$1.03.

2. Conversion of an existing Ameritech Illinois access line to UNE-P with basic analog loop and basic line port "as directed," i.e., with different, additional and/or fewer features and functions the line had when it was provided by the Company to the end user:

Ameritech Proposed Rate: \$11.79 (\$8.64 for basic line port plus \$3.14 for basic loop service order).

Nonrecurring Cost Model Rate: \$0.29

MCI WorldCom Adjusted Rate: \$1.03.

3. Combinations of elements for new lines and second lines provided via the UNE-P:

Ameritech Proposed Rate: \$11.79 (\$8.64 for basic line port plus \$3.14 for basic loop service order).⁸

Per Ameritech witness Silver, nonrecurring charges for "new customers" served via UNE-P are the same as those for conversions of existing access lines as is. Tr. 309. To be clear, then, the tariff needs to reflect this.

Ameritech witness Florence stated on the record that he did not develop a nonrecurring rate for this combination of elements. Tr. 601-602. Ameritech witness Silver could not explain what activities, if any, are required to convert "as is" an existing special access circuit to an EEL. Tr. 269-270, 371-380. A conversion of an existing access circuit "as is" to UNEs including an unbundled loop and unbundled transport should require nothing more than a "change record work only" charge because this conversion is no different than an "as is" conversion of an existing Ameritech access line to UNE-P.

Nonrecurring Cost Model Rate: \$0.29

MCI WorldCom Adjusted Rate: \$1.03.

4. Conversion of an existing special access circuit "as is" to
Unbundled Network Elements which make up the Enhanced Extended
LEEL:

Ameritech: No rate proposed.

Nonrecurring Cost Model Rate: \$0.29.

MCI WorldCom Adjusted Rate: \$1.02.

Pursuant to SBC/Ameritech Merger Conditions in Ill. C.C. Docket No.98-
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